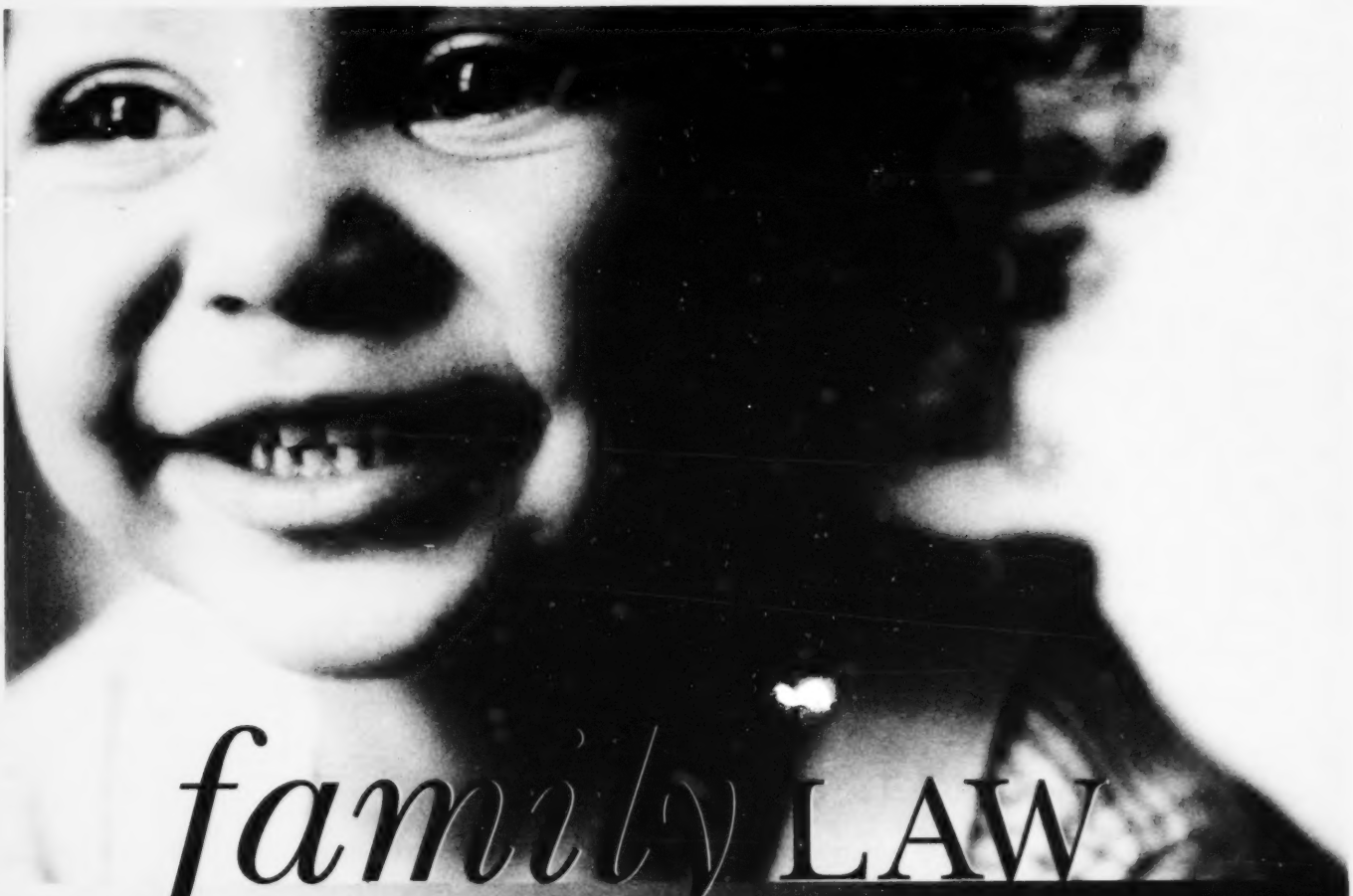
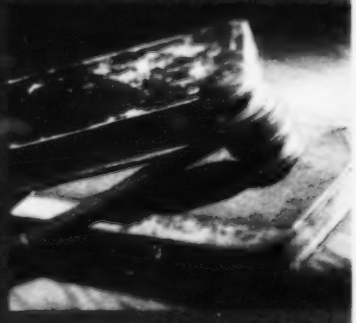


family LAW in MANITOBA

Updates to the 2002 Booklet



FAMILIES IN MANITOBA

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FAMILY LAW IN MANITOBA 2002

UPDATES TO NOVEMBER 2003

Family Law in Manitoba 2002 contains an overview of family law and the legal system in Manitoba as of February 2002. These updates make the booklet current to November 2003. Be sure to check the updates to Chapter 17 - Important Addresses and Phone Numbers, to get the most current contact information for resources listed in the booklet.

CHAPTER 2

The Court System and Procedures and Alternate Dispute Resolution

In Winnipeg, the Court of Queen's Bench (Family Division) initiated full case management as of November 1, 2002. If a family law case began on or after that date, it is automatically included in case management, unless it falls under one of the exceptions, such as child protection cases, applications to set aside protection orders under *The Domestic Violence and Stalking Prevention, Protection and Compensation Act*, and applications for private guardianship or adoption. More information on case management is available on the Internet at www.manitobacourts.mb.ca.

CHAPTER 3

Marriage

Court cases in Ontario and British Columbia have changed the law in those provinces, but at present, persons of the same gender cannot legally marry in Manitoba. The federal Parliament has exclusive authority to pass laws relating to the capacity to marry, and in July of 2003 the federal government drafted a proposed law that would allow same sex couples to marry. This draft law has been referred to the Supreme Court of Canada for its opinion on several constitutional questions.

CHAPTER 4

Separation and Divorce

As of September 30, 1999, spouses can no longer apply for non-molestation orders or prohibition orders. See Chapter 10, Family Violence for the new types of orders of protection the courts can make under *The Domestic Violence and Stalking Prevention, Protection and Compensation Act*. Under *The Family Maintenance Act*, the court can also make orders prohibiting or restricting communication and contact between spouses or common-law partners.

CHAPTER 5

Custody

At present, both *The Family Maintenance Act* and the *Divorce Act* use the terms *custody* and *access* (visitation). A bill (proposed new legislation) to change the federal *Divorce Act* was introduced December 10, 2002, but has not yet been passed. This bill, known as Bill C-22, proposes replacing custody and access orders with parenting orders

that set out what parenting time and responsibilities the parents will have. Information on the status of Bill C-22 is available on the Internet at www.parl.gc.ca/LEGISINFO.

CHAPTER 7

Child Support

In March 2003, a new information booklet was developed to help parents apply to court in Manitoba to change a child support order. This booklet, called A Guide to Changing Child Support Orders in Manitoba is available on the Internet at www.gov.mb.ca/justice/family/changembsupportorder. The booklet can also be obtained through Manitoba court offices, the Maintenance Enforcement Program, offices of Legal Aid Manitoba, the Community Legal Education Association or

the Family Law Branch
705 - 405 Broadway
Winnipeg MB R3C 3L6
Phone: 204-945-0268
Fax: 204-948-2004
Toll-free: 1-800-282-8069 (Ext. 0268)

On January 31, 2003, *The Inter-Jurisdictional Support Orders Act* came into effect and *The Reciprocal Enforcement of Maintenance Orders Act* was repealed, changing the procedures for recognizing, establishing and varying child support obligations when parties live in different provinces or countries. Manitoba now has reciprocal arrangements with three new countries; Switzerland, the Slovak Republic and the Czech Republic, bringing the total number of reciprocating countries to 26.

CHAPTER 9

Property

At present, *The Marital Property Act* does not apply to persons who are living together but not legally married. However, a new law has been passed, but is not yet in effect, that will change this. *The Common-Law Partners' Property and Related Amendments Act* was passed by the Manitoba legislature on August 9, 2002. It will change the name of *The Marital Property Act* to *The Family Property Act* and will extend it and many other property laws to common-law partners who have either registered their relationship with the Vital Statistics Agency or who have lived together for a specified period of time. *The Homesteads Act* will also apply to people in unmarried relationships once this new law comes into force.

Contact your lawyer or the Family Law Branch for further information on whether this law is in effect. If you are in a common-law relationship, you should consult a lawyer before the law comes into effect to discuss what impact the changes will have on you, as there are some things you may not be able to change afterwards.

CHAPTER 11

Enforcement of Support, Custody and Access

See the update to Chapter 5 - Custody, for information about proposed changes to the Divorce Act. Bill C-22 also proposes changes to the *Criminal Code of Canada*, so that the offence of parental child abduction will include abduction in contravention of either a custody order or a parenting order.

CHAPTER 12

Protection of Children

The Child and Family Services Authorities Act creates a new child welfare system in Manitoba, one that allows Authorities for the Northern and Southern First Nations and a Métis Authority to develop and deliver aboriginal child welfare services for their own people. A General Authority is also created for all others. This Act was passed August 9, 2002 and came into force November 24, 2003.

CHAPTER 13

Adoption

The Adoption Act has been amended so that as of January 1, 2003, same sex couples are allowed to apply jointly to adopt a child.

Another change to *The Adoption Act* is that two people who are neither spouses nor common-law partners are now allowed to apply jointly for a *de facto* adoption and two members of a child's extended family can apply jointly for an extended family adoption. There are additional home-study requirements for these kinds of adoptions, to ensure the stability of the adopting parties' relationship and their commitment to jointly care for the child.

All of these changes to *The Adoption Act* were part of *The Charter Compliance Act*, which was passed August 1, 2002.

CHAPTER 14

Change of Name

The law allowing a person to change their last name when they get married without making a formal application to the Vital Statistics Agency has been extended to persons in common-law relationships. As of January 1, 2003, common-law partners can assume their partners' surname or combine it with their own, in the same way that people can when they marry. Common-law partners who decide to change their last names in this way must file a declaration with the Vital Statistics Agency.

CHAPTER 15

Death in the Family

See the update to Chapter 9 - Property, for information about *The Common-Law Partners' Property and Related Amendments Act*, a new law that has been passed but is not yet in force. This new law provides that, as well as when the maker prepares a new will or marries, a will is revoked if a person who the maker has been living with becomes the maker's common-law partner. In this case, a person becomes a common-law partner by (a) the partners registering their relationship under *The Vital Statistics Act*, (b) cohabiting with the will-maker in a conjugal relationship for at least three years, or (c) cohabiting with the will-maker in a conjugal relationship for at least one year and they have a child together.

This new law will also give common-law partners other property rights on death. A surviving common-law partner will have the right to live in the family home under The Homesteads Act and will be able to ask for an accounting and division of assets on death under *The Family Property Act*. (*The Marital Property Act* will be renamed as *The Family Property Act*.) For these remedies, a person qualifies as a common-law partner if (a) the

partners registered their relationship under *The Vital Statistics Act* or (b) the partners cohabited in a conjugal relationship for at least three years. Common-law partners will also have a right to inherit when their partner dies without a will. Here, the qualification period is three years' cohabitation or one year and the partners have a child together. The changes to *The Homesteads Act* and *The Intestate Succession Act* also describe how competing claims of a spouse and common-law partner are to be dealt with.

If you are cohabiting in a common-law relationship, it is important to be aware of this law and when it comes into effect, as it can significantly affect your estate plans. If you are unsure whether this law might apply to you, or whether it has come into force, consult a lawyer.

CHAPTER 16

Unmarried Relationships

The law respecting rights and responsibilities of common-law partners has changed in some important ways, and more changes will be coming. *The Charter Compliance Act* was passed on August 1, 2002 and changed 56 different laws, so that common-law partners would be treated consistently, whether they were opposite sex partners or same sex partners. These amendments were primarily in the areas of adoption, conflict of interest, protection of the public interest and discrimination. In some cases, such as laws that spelled out when someone was required to disclose a conflict of interest, rights and responsibilities that only applied to married spouses were extended to common-law partners. Most of the changes contained in *The Charter Compliance Act* came into effect August 1, 2002. Changes to nine acts, including *The Adoption Act*, *The Change of Name Act* and *The Vital Statistics Act*, came into effect January 1, 2003. See the updates for Chapter 13 - Adoption and Chapter 14 - Change of Name for more information about *The Charter Compliance Act.*

The Common-Law Partners' Property and Related Amendments Act was passed by the Manitoba legislature on August 9, 2002, but is not yet in force in Manitoba. It will change the name of *The Marital Property Act* to *The Family Property Act* and will extend it and many other property laws to common-law partners who have either registered their relationship or who have lived together for a certain period of time. The most common time period to qualify as a common-law partner will be three years' cohabitation, but some laws will have a different time period. Once it is proclaimed in force, a person will qualify as a common-law partner even if some or all of the qualifying period took place before the law took effect. This new law will not affect people whose relationships ended before the law comes into effect.

This new law will significantly change the way property is dealt with when common-law partners separate or when one partner dies. For more information, see the updates for Chapter 9 - Property and Chapter 15 - Death in the Family.

CHAPTER 17

Important Addresses and Phone Numbers

This update is current as of November, 2003. If you do not see a listing here, then the information contained in the booklet is still accurate.

SHELTERS

Brandon
Westman Women's Shelter
Phone: 204-727-3644
Toll-free: 1-800-977-0007

Dauphin
Parkland Crisis Shelter
Phone: 204-638-9484
Toll-free: 1-877-977-0007

Portage la Prairie
Portage Women's Shelter
Phone: 204-239-5233
Toll-free: 1-877-977-0007

Selkirk
Nova House
Phone: 204-482-1200
Toll-free: 1-877-977-0007

Steinbach
Eastman Crisis Centre
Phone: 204-346-0028
Toll-free: 1-877-977-0007

Thompson
Thompson Crisis Centre
Phone: 204-778-7273
Toll-free: 1-800-977-0007

NON-CRISIS SERVICES

Winnipeg
Native Women's Centre
Phone: 204-989-8240
Fax: 204-586-1101

Women's Advocacy Program
Phone: 204-945-6851
Toll-free number no longer available

CHILD AND FAMILY SERVICES AGENCIES

Other Manitoba Regions
Manitoba Family Services -
Norman Regional Office
102-143 Main Street
Flin Flon MB R8A 1K5
Phone: 204-687-1700
Fax: 204-687-1708

First Nations Agencies
Awasis Agency of Northern Manitoba
39 Nickel Road
Thompson MB R8N 0Y5
Phone: 204-677-1500
After hours: 204-778-6341
Fax: 204-778-8428
Toll-free: 1-800-667-4734

West Region Child and Family Services
Rolling River First Nation
Box 280
Erickson MB R0J 0P0
Phone: 204-636-6100
Fax: 204-636-6158
Toll-free: 1-866-636-6100
Dauphin Office Toll-free: 1-888-333-5518

Kinosao Sipi Minisowin Agency
Norway House First Nation
Box 640
Norway House MB R0B 1B0
Phone: 204-359-4551
Fax: 204-359-6013

Nisichawayasihk Cree Nation Family and Community Services
Nelson House First Nation
Phone: 204-484-2604

LEGAL AID OFFICES

Winnipeg Legal Aid Offices
Criminal Law Office
514 St. Mary Avenue
Winnipeg MB
Phone: 204-985-8570
Fax: 204-774-7504
Toll-free: 1-800-672-1043

Regional Legal Aid Offices
Westman Community Law Centre
(Brandon Area Office)
236 - 11th Street
Brandon MB R7A 4J6
Phone: 204-729-3484
Fax: 204-726-1732
Toll-free: 1-800-876-7326

Human Resources Development Canada (information about sharing and entitlement to Canada Pension Plan benefits):
In person:
Winnipeg: 391 York Avenue
1122 Henderson Highway
1031 Autumnwood Drive
3338 Portage Avenue

Child Witness Support Program
Winnipeg: 204-945-0662
Brandon: 204-726-6515
The Pas: 204-627-8483
Thompson: 204-677-6368
Selkirk: 204-785-5213
Dauphin clients will be served from Brandon office

Winnipeg Children's Access Agency Inc.
170 Scotia Street
Winnipeg MB R3L 0L3
Phone: 204-284-4170
Fax: 204-284-3162